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OPINION

OF

HON. EDWARD BATES,

ATTORNEY GENERAL OF THE UNITED STATES,

ON THE

VALIDITY OF THE ACCEPTANCES

GIVEN BY

JOHN B. FLOYD, SECRETARY OF WAR,

TO

RUSSELL, MAJORS, & WADDELL, NOW  
HELD BY PEIRCE & BACON.  

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WASHINGTON:  
GOVERNMENT PRINTING OFFICE.

1862.



ATTORNEY GENERAL'S OFFICE,

JUNE 20, 1862.

Hon. E. M. STANTON,

*Secretary of War.*

SIR: When I had the honor to receive your letter of April 21, 1862, referring to me the consideration of the claim of Messrs. Peirce & Bacon, as holders of certain drafts drawn by Russell, Majors & Waddell, upon the Secretary of War, and accepted by John B. Floyd, the then Secretary, I doubted for some time whether I could venture to give any official answer touching the merits of the claim, because your letter does not contain, and was not accompanied by, any "case made," or statement of facts, which I might fairly take to be the true and only facts upon which the merits of the claim ought to be determined. My office has no legal faculty to investigate and adjudge facts—no power to compel the presence of persons and papers, nor even to administer an oath. It cannot, therefore, be expected of me to deal with the facts of the case beyond the means of knowledge which you have furnished me, that is, "the report of the special committee of Congress and the letters of Peirce & Bacon accompanying this reference." You also furnish, for my assistance in the matter of law, the printed arguments of four learned counsel, (Messrs. Goodrich & Cushing, of Boston, Mr. Black, of Washington city, and Mr. Broadhead, of St. Louis,) in support of the claim of Peirce & Bacon against the United States, for the amount of acceptances of Secretary Floyd, which they now hold.

Accompanied by only these means of information, you propound to me the following questions:

"1. Whether the government of the United States is legally or equitably bound to make payment to Peirce & Bacon, holders of the acceptances given by John B. Floyd, while Secretary of War, to Russell, Majors & Co., under the circumstances stated in the report of the special committee of Congress, and in the letters of Peirce & Bacon, accompanying this reference?

"2. What law or appropriation by Congress would authorize the Secretary of War to make payment of these acceptances, or any part thereof?

“3. Whether the government of the United States have any, and what, interest or claim to the acceptances given by John B. Floyd, and specified in the letter of Peirce & Bacon, to the Secretary of War, dated the 18th of March, 1862, and therein offered to be delivered up?”

If the legal merits of the claim depended altogether upon the facts, as disclosed in the testimony which you have sent me, I could not venture to give a definitive opinion upon them, because the testimony is contradictory in some particulars, and wholly wanting in others, and thus it is apparent that all the facts of the case are not fairly before me.

Some important facts, however, do appear with sufficient clearness, being plainly stated in the testimony and not contradicted, such as the following :

1. That Russell, Majors & Waddell had contracts with the War Department for transportation, to a large amount, from Missouri and Kansas to Utah and other places in the far west; that those contracts stipulated for payment by the government, by instalments, or rather successively, as the money should be earned by the performance of the work ; and that the money was paid under the contracts, from time to time, as it was earned ; and paid in the regular and accustomed manner by the quartermasters at Leavenworth and Washington city, respectively.

2. That Russell, using the name of his firm, drew a great many money orders, and to a very large amount, upon the then Secretary of War, Mr. Floyd, and that Mr. Floyd accepted them; that they were so drawn and accepted without any design or expectation that they should ever be presented to the War Department for payment; that they were drawn, not upon money already earned, but in anticipation of the contracts, and for the purpose of enabling Russell to raise money; and that it was understood and agreed between Russell and Floyd, that Russell should take up the acceptances at maturity, and retire them from the market; and that the acceptances now held by Messrs. Peirce and Bacon, and which form the basis of their present claim, are of that class.

In proceeding to answer your first question, I waive the consideration of the supposed *equitable* obligation of the government, beyond the law of the case, partly because all the facts which might touch the equities between the parties are not disclosed to me; but chiefly

because the claimants in their letters to you and your predecessors, Messrs. Cameron and Holt, and by their counsel in the printed arguments, rest their claim upon the sole ground of the legal obligation of the government to pay these drafts, which it is insisted are commercial bills of exchange, accepted by the government, negotiated in open market, and now held by innocent purchasers, for value.

That is the governing question in the case, and perhaps the only one which I ought now to consider.

Certainly the War Department has lawful authority to make contracts, binding upon the government, for transportation and supplies for the army. This is a statutory power, and must be exercised according to law. In this case, the legality of the original contracts with Russell, Majors and Waddell is not drawn into question; and those contracts seem to have been fulfilled, by the performance of the service, and the payment of the money.

It is not denied that the government, acting by the heads of departments, or by other subordinate officers, may use bills of exchange, in the transaction of the public business, in cases proper for the use of such instruments, and under circumstances which make it necessary, or, at least, convenient to use them. And when so used, they come under the law merchant and are governed by its rules. But it is not every order for the payment of money, drawn by one public officer upon another, or by a creditor or contractor upon a disbursing officer, that is a bill of exchange. What is a bill of exchange? is a judicial question, proper for the determination of the courts. It does not always depend upon the mere form of the instrument; for no particular form is required by law, but rather upon its basis, the character of the parties who use it, the nature of the transaction in which it is used, and the object to be attained by the use of it. Among merchants, it is an instrument requiring the utmost good faith in all the parties, and a careful conformity to the rules of law and the usages of trade. It is not used as a common evidence of debt, as a bond or note is, but generally for the payment of a pre-existing debt; and its characteristic office is to transfer money from one man to another or from one place to another. As a mercantile bill of exchange performs, to a large extent, the function of money in the general current of commerce, when once it has been drawn and accepted, and passed to an innocent purchaser, for value, it ought to have the full confidence of the trading community, and to

to be as free as possible from doubt and cavil. It ought to be free from all equities between the original parties, and to import an absolute debt at the time and place appointed. And this cannot be without exact knowledge of two very important facts—the genuineness of the acceptance and the authority of the acceptor to bind himself by such an instrument, if he appear to act in his own right, or to bind his principal if he assume to act as an agent. These facts, every man who buys such a bill must ascertain for himself and at his own peril, for it is plain that if the agent had not authority from his principal to accept the bill, the acceptance is void, as to the principal, and he is not bound by it. In such case, no matter how honest the endorsee, nor how much value he has paid, he has vested his money in a void security. And that not wholly without his own fault, for it was his business, (in the language of the Supreme Court, 15 Pet. 393,) to look to “the genuineness of the acceptance, and the authority of the officer to give it.”

It is a general rule which admits of few exceptions, that a man who has money in the hands of another with a right to receive it now, or at some known future time, if he do not choose to demand it himself in person, may, by a written note, direct the holder of the money, to whom he must pay it—it may be to the creditor, the child, the servant of him who gives the order. And the holder of the money, in such a case, has a perfect right, if not a moral obligation, to admit the goodness of the draft, and promise to pay it, and that is an acceptance. Still, it does not follow that the order is a bill of exchange. If it be a bill of exchange, it is made so by the drawer, and is perfect the moment he gives it out; and its character, as such, is not altered by the acceptance or refusal of the drawee.

Two questions here demand consideration—

1. Are these drafts, as now held by Messrs. Peirce & Bacon commercial bills of exchange, subject to the law merchant?

2. If they be such bills, had Mr. Floyd, as Secretary of War, lawful authority to accept them so as to bind the United States for their absolute payment?

As to the first : I have already given a brief statement of what I consider a bill of exchange to be, in point of law. The definition, the description, and the general rules of law applicable to bills of exchange are so familiarly known to intelligent merchants and lawyers, that I forbear the citation of many authorities upon that branch of

the subject. I only refer at large to Chitty on Bills, p. 134, &c. ; also, for Agency, p. 27, &c.

The drafts held by Peirce & Bacon have not been seen by me, but I accept as sufficiently reliable for this argument, the information furnished by Messrs. Peirce & Bacon themselves as to the form of the drafts. In their *statement of case* for the opinion of their counsel, Mr. Goodrich, as to the liability of the government, they say, "We are the holders of sundry acceptances, drawn by Russell, Majors & Waddel upon the War Department, and accepted by Secretary Floyd, of *which the following are samples*. (Of course, each one of the rest is in the one or the other of these forms.)

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"\$20,000.

WASHINGTON, November 26, 1859.

"Ten months after date pay to our own order, for value received, at the Bank of the Republic, New York city, twenty thousand dollars, and charge to account of our contracts for supplies of the army in Utah.

"RUSSELL, MAJORS & WADDELL.

"Hon. J. B. FLOYD,

"*Secretary of War.*"

*Endorsed upon the back:* "RUSSELL, MAJORS & WADDELL."

*Written upon the face:*

"E. T.

WAR DEPARTMENT, November 26, 1859.

"Accepted.

"JOHN B. FLOYD,

"*Secretary of War.*"

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"\$5,000.

WASHINGTON CITY, August 15, 1860.

"Seven months after date pay to our own order, at the Bank of the Republic, New York, five thousand dollars, for value received, and charge to our transportation contract of the 12th day of April, 1860.

"RUSSELL, MAJORS & WADDELL.

"Hon. J. B. FLOYD,

"*Secretary of War.*"

*Endorsed upon the back:* "RUSSELL, MAJORS & WADDELL."

*Written upon the face:*

"No. 58. Accepted.

"JOHN B. FLOYD,

*"Secretary of War.*

"WAR DEPARTMENT, 22d August, 1860."

Their statement proceeds: "Russell, Majors & Waddell were contractors with the War Department for supplies and transportation for the use of the army in Utah. We have no means of stating the terms of their contracts, except so far as they appear or may be implied from the bills of exchange."

On this I remark—

1. These forms are well enough for bills of exchange, if the facts warranted the forms.

2. Peirce & Bacon dealt directly with Russell, Majors & Waddell, (who were both drawers and endorsers of the drafts,) and thus they themselves began the operation of giving currency to these drafts.

3. They did it with full knowledge that Russell, Majors & Waddell were government contractors "for *supplies and transportation* for the use of the army in Utah." And, dealing with them as such contractors, they probably knew, in fact, and in contemplation of law were bound to know, that the drafts were drawn upon money to be earned under those contracts, and to be paid according to the terms thereof.

4. And yet, without assigning any reason for their lack of knowledge, they avow their ignorance of the terms of the contracts under which they were vesting large sums of money; and they utterly ignore the statute laws which govern such contracts.

5. Under these circumstances, it requires, I think, some degree of boldness to affirm that Messrs. Peirce & Bacon, who I understand are eminent merchants, are prudent and innocent holders of the drafts, for value, believing them to be mercantile bills of exchange.

I said above that the claimants rested their right upon the sole ground of legal obligation, resulting from the facts of the drawing, the accepting, and the endorsing of the drafts. Perhaps that statement ought to be a little modified; for I perceive that one of the learned counsel (by way, I suppose, of committing the government to an acknowledgment of the validity of the drafts, as accepted,)

states, in his printed argument, that "acceptances taken by them and their correspondents had been *duly paid*, as they matured." That is a clear mistake of fact. Not one of them was paid *by the acceptor*, at maturity, or ever; and that alone is *due payment*. If Russell (who was at once drawer and endorser) took them up and retired them, that is not due payment, but is only the carrying out by Russell of his private bargain with Floyd, whereby he (Russell) was to be enabled to raise money in advance of his lawful contracts, by selling the simulated securities of the government, in the shape of accepted drafts, which the drawer, and not the acceptor, was to redeem.

The War Department has never recognised these drafts as debts, legally binding upon it. Four Secretaries, in rapid succession—Floyd, Holt, Cameron, Stanton—have had the matter urgently pressed upon them; yet not one of them has paid a single one of those drafts. And, although three sessions of Congress have been held since the beginning of this difficulty, still, I believe, not one of those four Secretaries has included this item in his estimate of appropriations, proper to be made by Congress, for the public service. Why? I cannot certainly know, but probably because every one of them, knowing the statute law, knew that the Secretary of War had no authority to bind the United States, by accepting a contractor's draft, in advance of his contract, and before he had earned the money drawn for.

Now, an order to pay money, and an acceptance (which is an implied promise to pay) on a particular contingency, which may or may not exist, is not a mercantile bill of exchange; for, however respectable and solvent the names of the drawer, the acceptor, and the endorser, it does not import an absolute debt, payable at the time and place named. It cannot command the confidence of the trading community, nor pass current in the money market, for the plain reason that every holder must take it at his own risk, assuming the duty to ascertain for himself the existence of the facts necessary to make the instrument an available security—in other words, that the contingency will happen. Such a paper may be a very good contingent order for money, but not a commercial bill of exchange.

The word *draft* is generic, and comprehends all the species of money-orders—embracing bills of exchange, checks on bankers, and indeed every variety of written directions to pay money. All of them

are drafts, conferring rights and imposing obligations upon all who deal in them, as the laws apply to their respective cases ; but certainly they are not all commercial bills of exchange. If a public contractor draw upon the fiscal agent of the government for money supposed to be due him, by the terms of a written contract, it is, of course, subordinate to the contract; for the contractor can have no right to draw, nor the agent to promise to pay, otherwise than according to contract. Such a draft may be a good order to pay, under the circumstances, but surely not a commercial bill of exchange.

That Mr. Pierce knew the quality of these drafts, and the circumstances under which they were drawn and accepted, is manifest, from his letters which you sent me, and especially from his testimony given before the committee of the House of Representatives. (See printed report, p. 359, &c.) He knew that the drafts were drawn in reference to written contracts for supplies and transportation ; that they were drawn in advance of those contracts, and for money, at the date of the drafts, unearned under the contracts. And, under the circumstances, it is fair to impute to him the knowledge that Russell, and not Floyd, was expected to take up the drafts. He believed, with Floyd, (see his printed testimony as above,) that these drafts were the best public securities, *because* the appropriation was already made to pay Russell, Majors, and Waddell's contracts, and so "*no further action of Congress was necessary.*"

In my opinion, these drafts are not mercantile bills of exchange—not negotiable paper, under the law merchant.

The learned counsel of Messrs. Peirce and Bacon, all four of them, begin by assuming the main question in the case—that is, that these drafts *are* mercantile bills of exchange, that the United States had become a party to them by the acceptance of Mr. Floyd, and that they had been negotiated in open market. Assuming these fundamental propositions as true, a very easy and simple process of reasoning, (if, indeed, any reasoning be necessary in such a case,) leads to the inevitable conclusion that the United States ought to pay the money. It needs no argument to convince me that the United States, like a private person, ought, in all honesty, to fulfil its contracts. I am not resisting the conclusion drawn from the assumed premises, but denying the premises themselves—denying that these acceptances of Mr. Floyd constituted any contract of the United States.

As to the second question—that is, had Mr. Floyd, as Secretary of War, and, in that capacity, agent of the United States, authority to accept these drafts, so as to bind the government?

It seems to me very clear that he had no such power; that it did not belong to him, as a general power inherent in his office, or incident to the discharge of any duty imposed upon him by law; and, moreover, that it is forbidden by statute.

The United States always, and individuals often, act by agents, as well in regard to bills of exchange as other pecuniary transactions; and I am not aware of any legal difference between these two kinds of agencies, public and private, so marked as to need the separate consideration here of each kind. For the purposes of this argument, I will suppose that they are alike, and are governed by the same law, with perhaps this difference, that it is generally easier to ascertain the powers of a public agent, who is such by reason of holding a public office, than the powers of a private agent, because the powers and duties of the former are granted and limited by law, and therefore are presumed to be known to all men, whereas the powers and duties of the latter, depend upon the will of the individual employer, and are evidenced only by private acts.

I assume it as a general principle, inculcated by the whole theory and practice of our government, that there is no officer under the Constitution, from the President down to a disbursing clerk, who is entrusted by law with unlimited power over the money and the credit of the nation—no officer who has authority by law to create valid debts against the nation in any form, and especially by the bare fact of accepting bills of exchange, and that too without any rule but his own judgment, or any limit but the interest of himself and his friends. Such a power would be at war not only with the theory of our institutions, but with our history and our legislation from the very beginning of the government. There is no subject of legislation in regard to which Congress has habitually exhibited such vigilant caution and such jealous distrust, as the custody and disposition of the public money. The statute book abounds with checks and guards against those officers who are entrusted with the keeping of the public funds, and with penal denunciations against those who abuse that trust. Yet it is now seriously claimed that the head of a department, (and consequently any subordinate, who is entrusted with the keeping and the paying of the public money, or the making

of any contracts,) has power to create and establish a debt against the United States, by the bare fact of the acceptance of a bill of exchange, without any reference to the amount involved, or to the truth or falsehood of the facts upon which the bill is supposed to be founded. The acceptance of the Secretary of War, they insist, admits all material facts, and concludes the government.

One of the learned counsel in his printed argument thus compendiously states the law of the case, in favor of his clients :—

“The Secretary, by an unconditional acceptance of the drafts, admits the contracts, and the right of the drawers, under their contracts, to make the drafts. These admissions, in contemplation of law, upon the facts stated, in my judgment, are *conclusive* in your favor, *as indorsees*. The United States cannot be permitted to say that the drawers are not contractors, or that they were not authorized to make the drafts. This is the result of the principle that an acceptor who makes an unconditional acceptance, cannot resist the title of the holder, by saying he had no funds, or the drawer had no right to make the draft. This principle is applicable to the United States, as acceptors, to the same extent as it is to an individual who becomes an acceptor.”

If all this be true, there is no room for argument, and no possibility of escape; for it boldly assumes every material fact and every legal doctrine necessary to establish a perfect claim against the government. It assumes that the Secretary of War has “a general authority,” a broad, unlimited power, to accept bills of exchange, in the name of his office, so as to bind the nation. It assumes that because the Secretary wrote across the face of the bills these words, “Accepted, John B. Floyd, Secretary of War,” the United States has admitted that Russell & Co. had contracts with the government under which they had *the right to draw the bills*, (and, of course, if they had a right to draw, there was a corresponding duty to accept and pay) without any reference to the terms of the contracts, (for the terms are not stated,) and without any regard to the number of the drafts or the amount drawn for! And it assumes that these admissions are “conclusive” in favor of the claimants; and that the United States is, by some latent potency in the words, “accepted, John B. Floyd, Secretary of War,” estopped, concluded, “not permitted” to deny the obligation to pay the drafts, however large the amount; nor to inquire into the truth or falsehood of the assumed facts!

These assumptions are all made without any reference to the statute law ; for it is not even claimed that there is any act of Congress granting such enormous power to the Secretary of War, or to any officer of the government. But the power is inferred, by construction only, from the supposed nature and character of his legal duties. Waiving all prolonged argument against such startling inferences and dangerous constructions, I content myself with quoting a dictum of the Supreme Court, delivered by Chief Justice Marshall, in the case of the Postmaster General *vs.* Early, (12 Wheat., 136.) In that case, treating of the powers and duties of the Postmaster General, and the construction which had been attempted to be put upon them, and upon the laws which govern them, the court uses this emphatic language : "That construction which will produce a consequence so directly opposite to the whole spirit of our legislation, ought to be avoided, if it can be avoided without a total disregard of those rules by which courts of justice must be governed."

Thus far I have endeavored to treat of the authority of the Secretary to accept these drafts, upon general principles, and in view of his official relations to the nation, as one of its fiduciary agents. Let us see now whether there is any statutory prohibition against his giving such acceptances.

The act of Congress of January 31, 1823, chapter 9, section 1, (3 Stat. at Large, p. 723,) provides, "that from and after the passage of this act, no advance of public money shall be made in any case whatever; but in all cases of contracts for the performance of any service, or the delivery of articles of any description for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered, *previously to such payment.*"

[There are two provisos to this section, giving to the President certain special powers, in the cases therein mentioned, which do not touch the matter in hand.]

It is the plain meaning of this law, that no money shall be advanced to contractors; that is, that no money shall be paid to them on account of their contracts before the actual performance of the service or the delivery of the articles stipulated for. And this not only forbids the contracting officer of the government to pay the money in advance, but forbids him also to contract for such payment; for, manifestly, he cannot lawfully contract in behalf of the government to do a thing which the law forbids to be done.

If it be said that the giving of these acceptances is not an advance of public money, is not a payment exceeding the value of the services rendered or the articles delivered, I answer it is an attempt to enable the contractor to raise money, under color of his contract, which he had no right to have by the contract itself. It is an effort to pledge the faith of the nation, in a vendible form, for the obvious purpose of enabling the contractor to get money on account of his contract before the government owed him anything for service done or goods delivered under the contract. If this be not verbally and technically a breach of the statute, it is plainly an indirect contrivance to have money advanced to the contractor in fraud of the act of Congress.

Again, the act of February 26, 1853, chap. 81, section 1, (10 Stat. at Large, p. 170,) entitled "An act to prevent frauds upon the Treasury of the United States," provides, "That all transfers and assignments hereafter made, of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, *orders*, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

Since the receipt of your letter, you have, at my request, caused me to be furnished with a copy of two of the contracts made by Russell, Majors & Waddell, with the Quartermaster General, approved by Mr. Floyd, then Secretary of War. By these it appears that the quantity of freight to be carried was not precisely stipulated in the contracts, nor foreknown to the parties, but depended upon the exigencies of the government, and the directions of the quartermasters in charge; that the money did not fall due in any stipulated amounts or at stipulated times, but according to the amount of freight carried to particular places or particular distances, at rates fixed in a bill of prices, which forms a part of the contracts; and that there were contingent claims agreed for, which might or might not exist and be allowed.

And thus it appears that, under these contracts, settlements from time to time were indispensable; for in no other way could there be

“an allowance of such claim, and the ascertainment of the amount due, and the issuing of a warrant for the payment thereof,” as provided for in the above cited act of 1853. If these drafts were intended by the parties to be “*orders*” upon the contract money, then they were expressly forbidden by the act; and if they were intended to be general, commercial bills of exchange, without reference to the contracts, or to the funds to arise under them, then they had no honest foundation in fact or law—and, consequently, the Secretary of War had no authority to pledge the national faith for their payment. If he had such authority, it must rest upon the assumption that he is the general agent of the United States, with full power to charge the nation with indefinite debts, with no guide for his conduct but his own discretion, and no restraint but his personal honesty.

It is claimed on the part of Messrs. Peirce and Bacon, that the long practice of the government, and a long course of judicial decisions, do plainly establish the legality of their present demand. I cannot concur in that opinion; and in expressing my dissent, in view of the authorities cited in their behalf, I shall not weary you with any critical examination of the numerous cases referred to; for all of them, it seems to me, are substantially embraced within and covered by the leading case—the *United States vs. Bank of the Metropolis*, 15 Peters’ Rep., p. 378. That was an action of *assumpsit*, for the balance of an account; the plea was the *general issue* only. No bill of exchange or other draft was pleaded on the record, by either party, and so there could not be any direct issue of fact or law upon the existence or the legality of any such instrument. At the trial, indeed, the defendant gave in evidence certain drafts which had been drawn by mail contractors, drawn in some instances upon the Postmaster General, and in others upon the treasurer of the General Post Office, (who, I suppose, is, in fact, the disbursing clerk of that Department) These drafts, it seems, were accepted by those officers, respectively, and had passed to the bank by endorsement, in the way of trade.

The bank claimed to be allowed the amount of these drafts, by way of offset against the balance due to the United States, upon the account; and the court allowed the offset, and gave judgment accordingly. The Supreme Court simply affirmed the judgment of the court below.

Viewing this judgment, in itself, and in its legitimate legal con-

sequences, there is nothing in it conflicting with my doctrines, as herein expressed. For the action of the court did no more than allow the amount of the drafts to be set off against so much of the balance of account due the United States. And it is now the well-established doctrine of the Supreme Court, that equitable as well as legal claims may be allowed in offset. (See *Gratiot vs. United States*, 15 Peters, 336—especially p. 370.) And if it were made known to the court, by investigation of the circumstances, that the amount of the drafts was honestly and equitably due to the holder, the court could do no otherwise than allow it to be set off, even though the court should be of opinion that the Postmaster General and the treasurer had no lawful authority to accept those drafts as bills of exchange.

It is not, however, the judgment of the court that the claimants rely upon, but rather what was said, *arguendo*, by the learned judge who pronounced the opinion. It is true that there are several passages in the reported opinion tending to show that the court treated the drafts used in evidence in that case as bills of exchange, subject to the law merchant, and argued to the effect that the United States, when it becomes a party to negotiable, commercial paper, is, like private men, bound by that law. Still, there is not a sentence in the opinion tending to the conclusion that the nation is bound by the mere fact of acceptance by its officer. To the contrary, the court left the party in that case, under the burden imposed upon all by the well known law of agency, that is, whoever deals with a known agent, must, at his own peril, know the character and extent of the agent's power. For the court, after stating various important matters which are admitted and foreclosed by a genuine and authoritative acceptance, uses the plain and strong language: "All he had to look to was the genuineness of the acceptance, and the *authority of the officer to give it.*"

Upon the whole, I am clearly of opinion, that the acceptance by Mr. Floyd, the Secretary of War, of the drafts drawn upon him by Russell, Majors & Waddell, now held by Peirce & Bacon, are not legal contracts of the United States, and that the United States is not legally bound to pay any money on account thereof.

As to the supposed *equity* of the claim, beyond the law, I must decline to attempt the investigation. Such enquiries, it seems to me, do not properly belong to my office, but to the judiciary and to

Congress. Indeed, it seems strange to me, and is rather a suspicious circumstance, that this matter has never been presented to the court of claims, where both the law and the equity of the case could be fully heard and determined. It has been objected, I know, that a proceeding in that court would be ineffectual, because it cannot enforce the payment of the debt when ascertained and adjudged. But that objection lies equally against all courts; for none of them, not even the highest, can issue execution against the United States, or compel the government to pay a dollar. No money can be drawn from the Treasury, for any purpose, but in consequence of appropriations made by law. It follows, therefore, in every such case, that the actual payment must depend upon the action of Congress. And I cannot question the wisdom and justice of Congress, by doubting its readiness to make appropriations which may be necessary to pay all honest claims against the government, whenever lawfully allowed, by the proper tribunals.

I have the honor to be, most respectfully, sir, your obedient servant,

EDWARD BATES,  
*Attorney General.*

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